

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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**Berkshire Gas Company**

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**D.T.E. 06-27**

**ATTORNEY GENERAL'S FIRST SET OF  
INFORMATION AND DOCUMENT REQUESTS**

- AG-1-1      Please refer to JMB-3 (Redacted), Section 3, 3.1(a). Please define “agreed to market prices” and state how the Company will determine the “agreed to market price.”
- AG-1-2      Please refer to JMB-3 (Redacted), Section 3. Will the Company credit proceeds generated from the sale of excess gas to customers through Cost of Gas Adjustment factor (CGA) or allocate such proceeds to the Company’s shareholders or another entity? Provide the basis for any proceed allocation; include citations to the Department precedents or other regulatory requirements.
- AG-1-3      Please refer to JMB-3 (Redacted), Section 3. Please describe any rights held by another company or other companies, *i.e.* resource portfolio manager, aside from Berkshire, to determine the sale of excess gas.
- AG-1-4      Please refer to JMB-3 (Redacted), Section 3. Describe the Company’s plans to report and/or audit the sale of excess gas transactions.
- AG-1-5      Please refer to JMB-3 (Redacted), Section 2, 2.1(a)(b). State the status of the Right of First Refusal (“ROFR”). Include in the response all evaluations, studies, reports, correspondence, e-mails, notes, memorandum, presentation materials, and work papers related to the status and negotiation of the Company’s contingent ROFR.
- AG-1-6      State whether the Fuel Purchase Agreement (“FPA”) or the Amended Fuel Purchase Agreement (“AFPA”) included a ROFR.<sup>1</sup> If not, explain the absence of

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<sup>1</sup> FPA refers to the agreement between Altresco Inc., a Delaware Corporation, and Berkshire, dated March 15, 1989. D.T.E. 05-58, AG-1-3, Attachment 1-3(b). AFPA refers to the

an ROFR from those contracts. Include in this response all evaluations, studies, reports, correspondence, e-mails, notes, memorandum, presentation materials, and work papers related to the absence or presence of an ROFR in the FPA and/or the AFPA.

AG-1-7 Please refer to JMB-3 (Redacted), Section 2, 2.1(e). Explain how the Company determined the value of the “lump-sum payment.” Include in the response all evaluations, studies, reports, correspondence, e-mails, notes, memorandum, presentation materials and work papers related to the determination of that value.

AG-1-8 Please refer to D.T.E. 06-27, Direct Testimony of Jennifer M. Boucher (“Test.”), pp. 3, lines 14-22, pp. 6, lines 1-14. Explain in detail all backstop provisions the Company made to ensure reliable service in the event that additional Tennessee capacity fails to become available to the Company by the 2008/09 winter heating season? Provide the ‘cost per dth’ of each alternative.

AG-1-9 Please provide a columnar chart that includes the following:

- a. the actual volume of gas Berkshire Gas Company (“Berkshire” or “Company”) received pursuant to the AFPA for each Winter Period<sup>2</sup> starting with the 1998/99 Winter Period and ending with the 2002/03 Winter Period, and;
- b. the actual cost Berkshire paid for such gas, and;
- c. an estimated cost of such gas based on price terms set in the “Base Contract,” “Confirmation,” and “Letter Agreement” (“Agreement”)<sup>3</sup> and the Gas Transportation Agreement approved in D.T.E. 05-58. The gas purchased during the 1998/99, 1999/00, 2000/01 Winter Periods should be priced according to the Proposed Agreement price terms and the gas purchased during the 2001/02 and 2002/03 Winter Periods should be priced according to the price terms in the Agreement and the Gas Transportation Agreement approved in D.T.E. 05-58. Include the calculations and assumptions used to generate this estimation.

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agreement between Altresco Pittsfield L.P., a Delaware Corporation, and Berkshire, dated December 11, 1992. D.T.E. 05-58, AG-1-3, Attachment 1-3(a).

<sup>2</sup> “Winter Period shall mean the period beginning on November 1st of each year and ending on the following March 31st.” D.T.E. 05-58, AG-1-3, Attachment 1-3(a), pp. 2, paragraph 1, F.

<sup>3</sup> The Agreement is defined as (i) a North American Energy Standards Board Base Contract, (ii) a Transaction Confirmation dates as of December 7, 2005, and (iii) a Letter Agreement. D.T.E. 06-27, Direct Testimony of Jennifer M. Boucher, pp. 3, lines 5-12.

- AG-1-10 Please provide copies of all documents relating to the request for proposals (“RFP”) competitive solicitation process not already provided. Include copies of all the initial request letter(s) sent to each bidder, any updates in those letters, original RFPs, modification or amendments to the RFPs, and any responses sent by the RFP recipients to the Company. Include in this response all evaluations, studies, reports, correspondence, e-mails, notes, memorandum, presentation materials, and work papers related to the RFP response.
- AG-1-11 Please identify the RFP evaluation criteria used in the bid evaluation process and state whether RFP recipients received the RFP evaluation criteria and an explanation of the criteria, and describe Berkshires use of the criteria to evaluate bids. Please provide the RFP evaluation criteria, all evaluations, studies, reports, correspondence, e-mails, notes, memorandum, presentation materials, and work papers related to the bid evaluation.
- AG-1-12 Please refer to JMB-9 (Redacted). Explain why the Company:
- a. chose a 90 Day Service proposal over a 151 Day Service proposal, and;
  - b. failed to select the least cost 90 Day Service proposal.
- AG-1-13 Please describe the buy-out or take-over of Altresco Pittsfield by PurEnergy. Include the approximate date when PurEnergy bought out, or otherwise took over the operations of Altresco Pittsfield, and the approximate date that the Company learned of the buy-out or take-over. Include in this response all related evaluations, studies, reports, contracts, correspondence, e-mails, notes, memorandum, presentation materials, work papers, and any attachments to these documents.
- AG-1-14 Provide a detailed chronology of the Company’s knowledge of Altresco Pittsfield’s financial problems.
- AG-1-15 Please explain which Company, Altresco Pittsfield or PurEnergy failed to provide gas under the AFPA, and provide a detailed chronology the events that led to that failure.
- AG-1-16 Please state when and how the Company first learned that Altresco Pittsfield and/or PurEnergy, L.L.C. may not provide peaking supply service under the AFPA, how it confirmed that the Company would not have access to that peaking supply service, and describe the nature of any notice that the Company received regarding the loss of the peaking supply service. Include in this response all related evaluations, studies, reports, contracts, correspondence, e-mails, notes, memorandum, presentation materials, work papers, and any attachments to these documents.

- AG-1-17 Describe any communications with Altresco or Altresco Pittsfield regarding legal and non-legal remedies for Altresco Pittsfield's and/or PurEnergy's failure to supply peaking gas pursuant to the terms of the AFPA? Include in this response all related evaluations, studies, reports, correspondence, e-mails, notes, memorandum, presentation materials, work papers, and any attachments to these documents.
- AG-1-18 Did the Company conduct an internal evaluation to determine the Company's legal remedies and/or options under, but not limited to, the AFPA and FPA, and related Gas Purchase Agreements ("GPA") and Transportation Agreements ("TA") for Altresco Pittsfield's and/or PurEnergy's failure to supply peaking gas during and after the winter 2004/05 heating season?<sup>4</sup> Please provide a detailed explain the evaluation including evaluation periods or dates and evaluation participants. Include in this response all evaluations, studies, reports, correspondence, e-mails, notes, memorandum, presentation materials, and work papers related to or used in any evaluation.
- AG-1-19 Please refer to *Berkshire Gas Co.*, D.T.E. 05-58 Transcript ("Tr."), pp. 25. There the Company stated that "[the peaking contract that [the Company] had with [Altresco Pittsfield or PurEnergy] would only be enforceable so long as [Altresco Pittsfield or PurEnergy] had gas supply and capacity contracts that would deliver gas and capacity to that plant." Include a brief explanation that includes the basis for this conclusion, and provide all documents, contracts, memorandum, work papers and any attachments to these documents that support the basis for the Company's conclusion.
- AG-1-20 Describe in detail the Company's past, current, or planned efforts to enforce its rights pursuant to the AFPA, if any.
- AG-1-21 Please refer to the Company's response to D.T.E. 05-58, AG-RR-1. Define "supply agreements" and "regular oversight of the project."
- AG-1-22 Please refer to the Company's response to D.T.E. 05-58, AG-RR-1. Explain why the plant operator lost its transportation rights on the Tennessee system.
- AG-1-23 Please refer to D.T.E. 05-58, AG-1-2 (Company Reply). Please explain the Company's efforts to enforce its rights under the AFPA.

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<sup>4</sup> Anytime this document refers to GPAs or TAs it is referring to all GPAs and TAs ever in existence directly related to the AFPA and FPA.

- AG-1-24 Please refer to D.T.E. 05-58, AG-RR-1. Please provide a copy of each GPA, TA, and each GPA/TA amendment or successor. Identify any contract that the Company failed to provide and explain each failure.
- AG-1-25 Please refer to D.T.E. 05-58, AG-RR-1. State whether the Department of Telecommunications (DTE) approved TAs and GPAs and provide a brief explanation. Include the approximate review dates and copies of all related DTE orders.
- AG-1-26 Please refer to D.T.E. 05-58, Tr. pp. 13. Please thoroughly explain:
- a. each and every reason for the Canadian Gas Supplier's termination of the supply contracts, and;
  - b. the Company's position on whether suppliers breached any supply contract between the suppliers and Altresco, Altresco Pittsfield and/or PurEnergy when the suppliers terminated those supply contracts.

DATED: March 30, 2006